

No. 149

In the Supreme Court of the United States

OCTOBER TERM, 1941.

GREAT NORTHERN RAILWAY COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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MEMORANDUM FOR THE UNITED STATES

The Government does not oppose the granting of the petition for a writ of certiorari in this case.

The question involved is whether a railroad company has any right, title, or interest in the minerals underlying those portions of its right-of-way acquired under section 1 of the Railroad Right-of-Way Act of March 3, 1875, c. 182, 18 Stat. 482, 43 U. S. C. sec. 934.

The court below held that this Act conferred on the railroads rights in the nature of an easement and not a strip of land in fee, choosing to follow the language of the statute, and its administrative and legislative construction, rather than the dictum

of this Court in *Rio Grande Ry. v. Stringham*, 239 U. S. 44 (R. 133).

While the decision below is not in conflict with the adjudications of this Court nor with the decisions of other circuits, it does raise an important federal question which has not been but which should be settled by this Court (cf. Pet. 3-5). Thousands of miles of railroad rights-of-way in the public land states have been acquired by the railroads under the 1875 Act, and the question whether that grant included subsurface minerals is important not only to the railroads and the Government but to many subsequent patentees of lands crossed by these rights-of-way. Even though the decision below seems clearly correct, it will not constitute a definitive interpretation of the 1875 grant so long as this Court's dictum in the *Stringham* case is allowed to stand, nor will it be controlling in other circuits and in the state courts where the same questions will inevitably arise.

For the foregoing reasons the issuance of a writ of certiorari in the present case is not opposed.

Respectfully submitted.

CHARLES FAHY,
Acting Solicitor General.

JUNE 1941.